

**MASSACHUSETTS CLIENTS' SECURITY BOARD**  
**OF THE**  
**SUPREME JUDICIAL COURT**



**ANNUAL REPORT**  
**TO THE**  
**SUPREME JUDICIAL COURT**  
**FISCAL YEAR 2004**

**September 1, 2003 – August 31, 2004**



✚ FISCAL YEAR 2004

**CLIENTS' SECURITY BOARD**  
*of the Supreme Judicial Court*  
99 HIGH STREET  
BOSTON, MASSACHUSETTS 02110-2320

**CLIENTS' SECURITY BOARD**

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ADAM M. LUTYNSKI

August 30, 2004

Dear Reader:

As you will learn from the following pages, 2004 was a good, solid and very productive year for the Board. Faced with a substantial inventory of pending claims, my Board colleagues, our counsel and support staff rose to the challenge enabling us to decide a record number of claims, reduce a record number of pending claims by almost 40% and award more than \$2.4 million, the second highest amount in Board history. Lest you think Massachusetts has an epidemic of lawyer theft, only twenty-one disciplined and five deceased lawyers - a mere one-twentieth of one percent of the 47,721 active lawyers in the Commonwealth - were responsible for all \$2.4 million in awards.

Any Chair would be justly pleased with those results and the cooperative effort they reflect. I certainly am. Nevertheless, as we worked our way through the pending claims I grew increasingly troubled by the protracted time and travails many of these claimants had to wait and endure for reimbursement. Some of Shirley Hoak's former clients waited more than three years while they complied with a current Board discretionary requirement that claimants exhaust civil remedies before the Board will review their claims. Another claimant, before us because of Joseph Shanahan's misconduct, not only waited thirty-three months but also paid more than \$25,000.00 in legal fees to sue a bank that had accepted a \$392,000.00 check from Mr. Shanahan with a missing endorsement.

To me, such lengthy waits and substantial expenditures for legal fees and litigation costs are not only unacceptable but also detract from the Board's mission to compensate victims of lawyer theft, while upholding the integrity of the profession. Our colleagues in the client protection movement in parts of

## ✦ FISCAL YEAR 2004

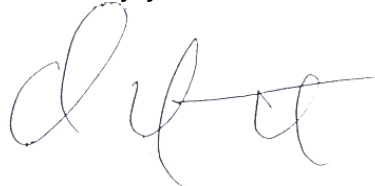
Canada and other jurisdictions outside the United States have a better idea. Their funds are the first, not the last, resort for injured clients, minimizing their grief, frustration, anger, expense, distrust of the profession and use of scarce judicial resources. Our Fund should promptly reimburse a proven theft. Once that is done, the Board, as claimant's assignee, may use its resources to pursue recovery from any solvent third parties.

Taking my leave after five gratifying years, I hope that future Boards will reshape policy, asserting a primary jurisdiction of claims alleging lawyer defalcation. The old maxim comes to mind: "Justice delayed is justice denied." To me, "Reimbursement delayed is reimbursement denied."

While admittedly biased, I believe that Massachusetts has the finest Clients' Security Fund in the nation. The Supreme Judicial Court established the Fund 30 years ago and supports its core mission to the utmost. Counsel, who by rule represent claimants before the Board without compensation, exemplify the best of the Bar as they attempt to restore trust in our profession. The eleven Board members with whom I have served over the past five years: Mark N. Berman, Mark I. Berson, Peter G. DeGelleke, John R. Gobel, Guy B. Moss, Mary H. Schmidt, Thomas G. Sitzman, Joseph D. Steinfield, Peter H. Sutton, Evelynne L. Swagerty, and Lucy W. West, are extraordinarily dedicated and tireless in their service to the public and the profession.

It's been an honor for which I am most grateful.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Ed W. McIntyre', with a long horizontal flourish extending to the right.

Edward W. McIntyre  
Chair

## TABLE OF CONTENTS

	Page Nos.
<b>LETTER FROM THE CHAIR</b> ... ..	1
<b>2004 - Pending Claims: Responding to the Challenge</b> ... ..	5
Designated Hearing Officer ... ..	5
Consent Disposition Docket ... ..	6
Third-Party Recovery Dismissals ... ..	6
<b>2004 - Beyond Pending Claims</b> ... ..	6
The Hispanic Community ... ..	6
Worcester Hearings ... ..	7
Distribution of the 2003 Annual Report ... ..	7
Media Publicity ... ..	7
Senior Partners for Justice - Volunteer Lawyers Project ... ..	8
<b>CLAIMS</b> ... ..	9
General ... ..	9
Claims Activity Table: Fiscal Years 1994-2004 ... ..	9
<b>DISPOSITION OF CLAIMS</b> ... ..	10
<b>Awards</b>	
General ... ..	10
Lawyers with Highest Defalcation (Chart) ... ..	10
Total Awards by Disciplined or Deceased Attorney (September 1, 2004-August 31, 2004) (Table) ... ..	11
Awards by Category ... ..	12
Detail of Awards by Category (Table) ... ..	12
1. Trusts and Estates ... ..	13
2. Fiduciary ... ..	13
3. Unearned Retainers ... ..	14
4. Settlement ... ..	14
5. Bankruptcy ... ..	15
6. Real Estate ... ..	15
7. Investments ... ..	16
8. Taxes ... ..	16

## ✚ FISCAL YEAR 2004

	Page Nos.
<b>DISMISSED CLAIMS</b> ... ..	17
Details of Dismissed Claims (Table) ... ..	17
<b>PENDING CLAIMS</b> ... ..	18
Analysis of Pending Claims at Fiscal Year End 8/31/04 (Table) ... ..	18
<b>RESTITUTION</b> ... ..	18
<b>PRO BONO LAWYERS</b> ... ..	19
<b>WILLIAM J. LeDOUX AWARD 2004</b> ... ..	22
Previous Winners of the William J. LeDoux Award ... ..	23
<b>CLIENTS' SECURITY BOARD MEMBERS</b> ... ..	24
<b>CLIENTS' SECURITY BOARD COUNSEL</b> ... ..	26
<b>HOW TO FILE A CLAIM FOR REIMBURSEMENT</b> ... ..	27
<b>CLIENTS' SECURITY BOARD MEMBERS (1974-Present)</b> ... ..	28

## **2004 - Pending Claims: Responding to the Challenge**

This fiscal year presented a singular challenge: 176 pending claims, the largest number in Board history and 16% greater than the previous high of 152 in 1994. If the Board were to decide 85 claims (the average of the preceding five years) during 2004 and were to receive 96 new claims (the average for the preceding five years), pending claims would grow to a lofty and undesirable 187 by year's end. An "average" year would simply not do. The task was clear: focus on deciding more claims to bring needed relief to deserving claimants.

In large measure the Board itself created this increase in pending claims through its outreach efforts described in the 2003 Annual Report. That outreach, especially to the Vietnamese community, led to the filing of 116 new claims during 2003, a 41.5% increase over 2002. The Board never once questioned the appropriateness of that effort. However, despite all the customary disclaimers accompanying them, outreach efforts have their own way of arousing hopes and expectations. The Board had to confront this reality and tailor an effective response to this unprecedented condition.

In its endeavor to be creative, flexible, and adaptable the Board identified three categories of pending claims that might lend themselves to prompt resolution because: 1) many of the forty-three claims related to deceased attorney Thai Ngoc Nguyen were well-documented and reflected the same pattern of defrauding clients; 2) the thirty-two claims related to disciplined lawyer Irine Bavelsky contained her individual admissions of responsibility to her clients, followed the identical method of misappropriating client funds and could be paid with funds available from a third-party recovery; and, 3) twelve claims related to disciplined lawyer Shirley Hoak already had been scrutinized by a trustee appointed by her former employer and the employer's malpractice insurer to investigate all claims and to make final determinations on their merits for insurance purposes.

For these eighty-seven claims, the Board adopted special procedures to streamline its decision-making process.

**Designated Hearing Officer** - Between regular monthly meetings, one Board member served as a designated hearing officer to review memoranda and exhibits from Board counsel on selected claims. At the next monthly meeting the designated hearing officer presented brief summaries and recommendations to the Board for a final vote.

## ✦ FISCAL YEAR 2004

**Consent Disposition Docket** - Twenty-seven claims relating to deceased lawyer Thai Ngoc Nguyen totaled \$33,566.00 for an average of \$1,200.00. For these claims the Board directed its counsel to provide brief memoranda in which exhibits were summarized. Board counsel made oral presentations and recommendations to the Board at its monthly meeting. Following questions, discussion and examination of exhibits, where appropriate, the Board took a final vote.

**Third-Party Recovery Dismissals** - For some three years the Board pursued recovery from disciplined lawyer Irine Bavelsky and related parties. Because of Ms. Bavelsky's admissions, substantial language and cultural barriers (Russian and Spanish) for almost all claimants (which would have required translators and consultants), unusually complex evidentiary issues, and the economic circumstances of most claimants, the Board determined that hearings would be an imprudent use of resources. As a consequence, after reaching a final settlement with third parties this year, the Board distributed the settlement proceeds (\$80,294.00) pro-rata to all thirty-two claimants (average \$2,509.00) and dismissed the claims. No Clients' Security Board funds were disbursed to these claimants.

By combining these special procedures with the regular monthly docket of hearings, the Board decided an all-time high of 159 claims and awarded a total of \$2.42 million, the second highest total in the Board's history. At year's end pending claims dropped to 107, a 39% reduction.

## 2004 - Beyond Pending Claims

The year was not exclusively devoted to deciding claims. The Board continued its outreach efforts.

### *The Hispanic Community*

Following up on last year's work with the Vietnamese community, the Board commissioned Spanish language translations of its application materials and posted them on its web site. For their expert and gracious assistance, the Board gratefully acknowledges Christa Arcos, Esq. of the Office of Bar Counsel, Luz A. Arevalo, Esq. of the Employment Unit of Greater Boston Legal Services, Jacqueline Taylor, Esq. of Boston, Nestor Bojaca, a law student from Colombia now of Brooklyn, New York, and Detective Antonio Arcos of the Cambridge Police Department.

## ✚ FISCAL YEAR 2004

### *Worcester Hearings*

In May the Board traveled to Worcester, Massachusetts for the LeDoux Award presentation (see page 22) and held its regular monthly meeting there. This was the first time the Board had held a monthly meeting outside of Boston. The Worcester meeting was convenient to one local claimant who received an award of more than \$300,000.00.

### *Distribution of the 2003 Annual Report*

The Board expanded the distribution of its annual report from 1,200 mailings in 2003 to just about 2,000 mailings in 2004, to include the following:

- local bar associations
- *pro bono* lawyers who represented claimants before the Clients' Security Board from 1974 to present
- 205 banks holding IOLTA accounts
- over 400 law school, academic, public and community libraries
- more than 300 major, local, and community newspapers
- 39 major, community and public TV and radio stations
- Massachusetts court departments at all levels
- District attorneys
- Organizations, e .g., National Client Protection Organization
- ADR's, *pro bono* legal services programs and other private and governmental agencies that assist poor and indigent clients.

### *Media Publicity*

- ❖ Fox 25 TV Network continues to publicize the Board's work by providing a link to our web site, related to its November 18th, 2003 story by award-winning investigative reporter Mike Beaudet, which featured the Clients' Security Board.
- ❖ Interview of Chairman, Edward W. McIntyre, at the Boston Neighborhood Network (BNN) by host Chris Lovett on 3/22/04.
- ❖ "Lawyer Held Responsible," TheSunChronicle.com, March 11, 2004.



## ✦ FISCAL YEAR 2004

- ❖ “State Board Reimburses Disbarred Lawyers’ Victims,” *The Providence Journal* at <http://www.projo.com>, March 12, 2004.
- ❖ “Clients’ Board Claims Reach A Record High,” *Massachusetts Lawyers Weekly*, March 15, 2004, p. 2.
- ❖ “New Challenge for the CSB,” *Massachusetts Lawyers Weekly*, March 22, 2004, p. 10 Editorial (32 M.L.W. 1538)

### *Senior Partners for Justice - Volunteer Lawyers Project*

This year, the Board began a cooperative experiment with Senior Partners for Justice, a group of senior and retired members of the bar, drawn together by the efforts of retired Justice Edward Ginsburg. Participating volunteers work under aegis of the Volunteer Lawyers Project of the Boston Bar Association. The Board hopes to pair volunteers from Senior Lawyers with unrepresented claimants whose claims present circumstances requiring the skills of a veteran lawyer.

\* \* \*

*I can't express how thrilled I am about the Board's decision. . . .*

*I found the entire process enlightening and even exciting. The questions were objective and not at all confrontational. . . .*

*The fact that you sit there without compensation says a lot, and appears to be consistent with the personalities to whom I was exposed for a few minutes.  
(CSB-2003-116) 2/18/04*

## CLAIMS

### *General*

The Board received 90 new claims in fiscal 2004. It also decided 159 claims, the highest number in Board history. The Board also dismissed the highest number of claims (58) since 1981, when it dismissed 61. Board awards totaled \$2,412,597.49, the highest figure since 2000 when the Board awarded \$2,744,848.83.

During 2004, the Board continued its policy of awarding 100% of the claimants' eligible losses, whatever the amount. The sole exception was the Board's decision to reduce by \$38,000.00 the award to an institutional claimant whose officers negligently supervised the lawyer who misappropriated the institution's funds.

### CLAIMS ACTIVITY TABLE: FISCAL YEARS 1994-2004

Fiscal Year	Claims Filed	Claims Adjudicated	Claims Dismissed	Awards Made	Award Amounts	Defalcation	Claims Pending	Total Amount of Pending Claims
1994	109	157	27	130	\$1,203,911.62	\$1,301,225.72	103	\$6,388,646.51
1995	90	103	35	68	\$1,602,217.70	\$1,837,125.44	92	\$4,941,427.08
1996	139	100	33	67	\$1,696,870.13	\$2,770,734.17	130	\$6,704,036.56
1997	81	113	30	83	\$2,058,900.92	\$2,348,443.15	100	\$6,011,390.39
1998	119	102	46	56	\$1,254,229.91	\$1,313,307.70	117	\$4,896,354.03
1999	80	98	32	66	\$2,119,675.47	\$2,512,843.05	103	\$3,978,062.06
2000	83	108	22	86	\$2,744,848.83	\$2,812,926.57	78	\$3,175,277.78
2001	119	70	15	55	\$1,963,555.27	\$1,963,555.27	125	\$5,766,860.34
2002	82	94	25	69	\$1,066,379.91	\$1,083,745.75	115	\$10,935,665.79
2003	116	56	11	45	\$1,055,477.00	\$1,147,876.90	176	\$14,527,530.07
2004	90	159	58	99	\$2,412,597.49	\$2,449,947.49	107	\$12,526,853.85

## DISPOSITION OF CLAIMS

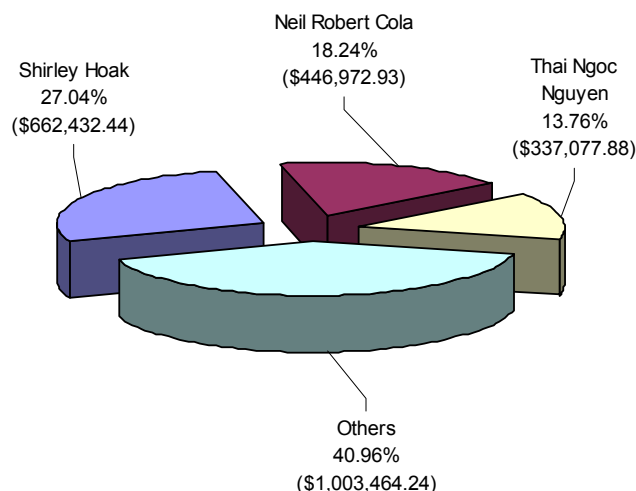
### Awards

#### *General*

During 2004, ninety-nine claimants received awards totaling \$2,412,597.49. Only 1994, when the Board made 130 awards, surpassed this year's number. However, the total awarded in 1994 (\$1,203,911.62) was less than half this year's figure. Twenty-one disciplined and five deceased lawyers were responsible for these awards. They represent a statistically microscopic 1/20<sup>th</sup> of one percent of all active Massachusetts lawyers. The smallest single award was \$200.00. By contrast, the largest single award (\$330,752.93) was made against Neil Robert Cola, where claimant's sister retained Mr. Cola to sell her home before she moved into a nursing home. Using a power of attorney, Mr. Cola completed the sale of the home and misappropriated the proceeds check of \$330,752.93. After her sister's death, claimant hired counsel to pursue Mr. Cola, but the money was gone.

Three individuals, Shirley Hoak, Neil Robert Cola and the late Thai Ngoc Nguyen were responsible for \$1,446,483.10 or 59.96% of the total awarded. Twelve claims were paid because of the misconduct of Ms. Hoak, the largest being \$227,830.72. Forty-three claims were paid to former clients of Thai Ngoc Nguyen, the largest being \$94,388.99. Of the remaining 40.04% (\$966,114.24), deceased lawyer Kevin G. Scott was responsible for a \$227,670.44 claim; Harvey H. Anderson for a \$152,250.00 claim; and Brian W. Chance for a \$120,000.00 claim.

**Lawyers with Highest Defalcation**



## ✚ FISCAL YEAR 2004

### Total Awards by Disciplined or Deceased Attorney (September 1, 2003-August 31, 2004)

Name	Town	County	No. of Awards	Defalcation	Total Awarded
Shirley A. Hoak	Cambridge	Middlesex	12	\$ 662,432.44	\$ 662,432.44
Neil Robert Cola	Chelsea	Suffolk	3	\$ 446,972.93	\$ 446,972.93
Thai Ngoc Nguyen	Dorchester	Suffolk	43	\$ 337,077.88	\$ 337,077.88
Kevin G. Scott	Milton	Norfolk	1	\$ 227,670.44	\$ 227,670.44
Harley H. Anderson	Waltham	Middlesex	1	\$ 152,250.00	\$ 152,250.00
Brian W. Chance	Lowell	Middlesex	1	\$ 120,000.00	\$ 120,000.00
Edward J. O'Connell	Melrose	Middlesex	1	\$ 152,000.00	\$ 114,000.00
Gary L. Meyers	Brookline	Norfolk	10	\$ 74,989.00	\$ 74,989.00
James Stuart Gallagher	Seekonk	Bristol	1	\$ 68,860.00	\$ 68,860.00
Harvey J. Greece	Mansfield	Bristol	1	\$ 34,048.38	\$ 34,048.38
Bruce G. Rosen	Providence, RI		2	\$ 28,350.00	\$ 28,350.00
Paul B. Morley	Canton	Norfolk	1	\$ 24,457.00	\$ 24,457.00
John W. Capone	Oakham	Worcester	2	\$ 19,178.24	\$ 19,178.24
William C. McPhee	Norwell	Plymouth	1	\$ 18,000.00	\$ 18,000.00
Jeffrey S. Lambert	Boston	Suffolk	1	\$ 17,500.00	\$ 17,500.00
David P. Ulin	Ashland	Middlesex	2	\$ 12,221.00	\$ 12,221.00
Richard H. Wynn	Revere	Suffolk	5	\$ 11,719.00	\$ 11,719.00
David Mitchell Lemler	Melrose	Middlesex	1	\$ 10,903.18	\$ 10,903.18
Shawn C. Salter	Boston	Suffolk	1	\$ 10,000.00	\$ 10,000.00
Richard R. Howarth	Providence, RI		2	\$ 5,500.00	\$ 5,500.00
David P. Swan	Medfield	Norfolk	1	\$ 4,200.00	\$ 4,200.00
Richard M. Passalacqua	Framingham	Middlesex	1	\$ 4,000.00	\$ 4,000.00
Leon Aronson	Boston	Suffolk	1	\$ 2,500.00	\$ 2,500.00
Arthur L. Weiner	East Falmouth	Barnstable	1	\$ 2,250.00	\$ 2,250.00
Edward K. Boyer	Fall River	Bristol	1	\$ 2,000.00	\$ 2,000.00
Howard Fuchs	Whitinsville	Worcester	1	\$ 868.00	\$ 868.00
			1	\$ -	\$ 650.00
Total*			99	\$ 2,449,947.49	\$ 2,412,597.49

\* Total Defalcation amount exceeds Total Awarded because the Board found an institutional claimant negligent by failing to adequately supervise its counsel and reduced the claimant's award by 25%. The Total Awarded includes a \$650.00 hardship award related to the inadequate client bookkeeping of a deceased attorney.

## ✦ FISCAL YEAR 2004

### *Awards by Category*

As in several prior years, the Unearned Retainer category again led in the number of awards (52) representing 52.53% of the total number but only 6.99% of the total dollars awarded (\$168,728.00). The Settlement Proceeds category accounted for sixteen awards (16.16% of the total) but represented only 6.30% of total dollars awarded (\$152,046.87). However, Trust and Estates with only three awards (3.03% of the total) represented the largest payout category (\$710,833.65) or 29.46% of the total. The Fiduciary category with 10 awards (10.10% of the total) accounted for \$630,750.24 or 26.14% of funds reimbursed. Award details appear in the following table.

**Table Detailing Awards by Category, Total Awarded  
and Total Defalcation**

CATEGORY	NO. OF AWARDS	% OF TOTAL AWARDS	TOTAL AWARDED	% TOTAL \$\$ AWARDED	TOTAL DEFALCATION	% TOTAL
Taxes	1	1.01%	\$ 40,125.00	1.66%	\$ 40,125.00	1.64%
Bankruptcy	2	2.02%	\$ 1,750.00	0.07%	\$ 1,750.00	0.07%
Investment	2	2.02%	\$ 257,670.44	10.68%	\$ 257,670.44	10.52%
Trusts & Estates	3	3.03%	\$ 710,833.65	29.46%	\$ 710,833.65	29.01%
Fiduciary	10	10.10%	\$ 630,760.24	26.14%	\$ 668,760.24	27.30%
Real Estate	13	13.13%	\$ 450,683.29	18.68%	\$ 450,683.29	18.40%
Settlement	16	16.16%	\$ 152,046.87	6.30%	\$ 152,046.87	6.21%
Unearned Retainer	52	52.53%	\$ 168,728.00	6.99%	\$ 168,078.00	6.86%
<b>Total</b>	<b>99</b>	<b>100.00%</b>	<b>\$ 2,412,597.49</b>	<b>100.00%</b>	<b>\$ 2,449,947.49</b>	<b>100.00%</b>

## ✚ FISCAL YEAR 2004

### 1. **Trusts and Estates: 3 awards, \$ 710,833.65**

Misappropriation of money or other assets, intended for the heirs, beneficiaries or a trust, by an attorney serving as trustee, executor or counsel to the executor or trustee.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Neil Robert Cola	1	\$ 330,752.93	46.53%
Shirley Hoak	1	\$ 227,830.72	32.05%
Harley H. Anderson	1	\$ 152,250.00	21.42%
Total	3	\$ 710,833.65	100.00%

In 2003 the Board made eight awards in this category totaling \$644,822.33. This year presents a 62.5% decrease in the number of awards but a 10% increase in the total amount awarded.

### 2. **Fiduciary: 10 Awards, \$630,760.24**

The misuse of funds held by an attorney acting as a fiduciary where there is an attorney-client relationship.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Shirley Hoak	5	\$ 355,558.00	56.37%
Brian W. Chance	1	\$ 120,000.00	19.02%
Edward J. O'Connell	1	\$ 114,000.00	18.07%
Jeffrey Lambert	1	\$ 17,500.00	2.77%
John W. Capone	1	\$ 15,202.24	2.41%
Thai Ngoc Nguyen	1	\$ 8,500.00	1.35%
Total	10	\$ 630,760.24	100.00%

Compared to 2003, the number of awards in this category doubled (from 5 to 10) and the total amount awarded more than tripled (from \$195,557.11 to \$630,760.24). Ms. Hoak alone was responsible for 56% of the total amount awarded.

## ✚ FISCAL YEAR 2004

### 3. Unearned Retainers: 52 awards, \$ 168,728.00

Client money accepted by an attorney who fails to perform the agreed upon legal services. These claims should not be confused with fee disputes or malpractice claims where an attorney negligently performs legal services causing financial loss to a client.

Attorney	No. of Awards	Total Award/Attorney	% of Total Awarded
Thai Ngoc Nguyen	25	\$ 31,816.00	18.86%
Gary Meyers	9	\$ 44,989.00	26.66%
Shirley Hoak	4	\$ 5,925.00	3.51%
Richard Wynn	2	\$ 5,000.00	2.96%
David P. Ulin	2	\$ 12,221.00	7.24%
Richard R. Howarth	2	\$ 5,500.00	3.26%
Paul B. Morley	1	\$ 24,457.00	14.49%
William C. McPhee	1	\$ 18,000.00	10.67%
Leon Aronson	1	\$ 2,500.00	1.48%
Deceased (Hardship)	1	\$ 650.00	0.39%
David P. Swan	1	\$ 4,200.00	2.49%
Arthur L. Weiner	1	\$ 2,250.00	1.33%
Shawn C. Salter	1	\$ 10,000.00	5.93%
Neil Cola	1	\$ 1,220.00	0.72%
Total	52	\$ 168,728.00	100.00%

Despite a 288% increase in the number of awards (18 to 52) compared to 2003, the total amount awarded in this category decreased by approximately \$500.00 (\$169,295.32 compared to \$168,728.00).

### 4. Settlement: 16 awards, \$152,046.87

Misappropriation of proceeds from the settlement of personal injury matters or other litigation.

Attorney	No. of Awards	Total Award/Attorney	% of Total Awarded
James Stuart Gallagher	1	\$ 68,860.00	45.29%
Thai Ngoc Nguyen	6	\$ 28,370.69	18.66%
Bruce G. Rosen	2	\$ 28,350.00	18.65%
David Mitchell Lemler	1	\$ 10,903.18	7.17%
Richard H. Wynn	3	\$ 6,719.00	4.42%
Richard M. Passalacqua	1	\$ 4,000.00	2.63%
John W. Capone	1	\$ 3,976.00	2.61%
Howard Fuchs	1	\$ 868.00	0.57%
Total	16	\$ 152,046.87	100.00%

## ✚ FISCAL YEAR 2004

When compared to 2003, this category saw a sharp increase both in the number of awards (6 to 16 or 283%) and the total amount awarded (\$23,583.27 to \$152,046.86 or 644.72%).

### 5. **Bankruptcy: 2 awards, \$1,750.00**

Misappropriation of client funds intended as payments to the bankruptcy court or to creditors.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Thai Ngoc Nguyen	2	\$ 1,750.00	100.00%
Total	2	\$ 1,750.00	100.00%

In this category the number of awards fell by 60% (5 to 2) and the total amount awarded declined 91% from \$19,199.00 in 2003 to \$1,750.00 this year.

### 6. **Real Estate: 13 awards, \$450,683.29**

Misappropriation of deposits, escrows or sale proceeds in real estate transactions.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Thai Ngoc Nguyen	10	\$ 268,641.19	59.61%
Neil R. Cola	1	\$ 115,000.00	25.52%
Harvey J. Greece	1	\$ 34,048.38	7.55%
Shirley Hoak	1	\$ 32,993.72	7.32%
Total	13	\$ 450,683.29	100.00%

This year showed a significant increase both in the number of awards compared to 2003 (3 to 13 or 433.33%) and in the total amount awarded (\$3,019.97 to \$450,683.29 or 14,923%).



## ✚ FISCAL YEAR 2004

### 7. **Investments: 2 awards, \$257,670.44**

During the course of a lawyer-client relationship, the lawyer undertakes to invest the client's funds but instead uses the funds for the lawyer's own benefit.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Kevin G. Scott	1	\$ 227,670.44	88.36%
Gary L. Meyers	1	\$ 30,000.00	11.64%
Total	2	\$ 257,670.44	100.00%

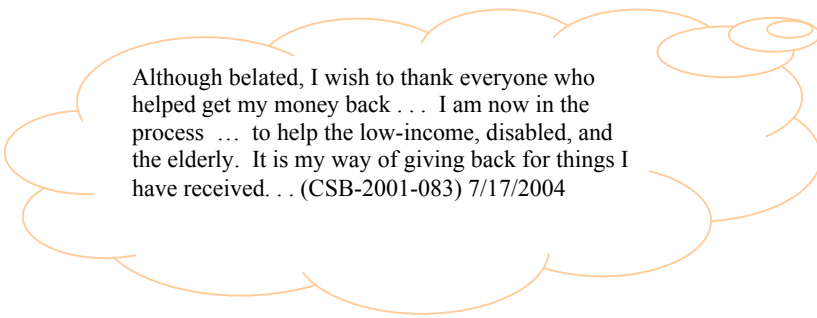
There were no awards in the Investments category during 2003.

### 8. **Taxes: 1 award, \$40,125**

While negotiating with taxing authorities on the client's behalf, the lawyer requires a substantial deposit from the client and then uses the funds for the lawyer's benefit instead of paying the client's tax bill.

Attorney	No. of Awards	Total Award/ Attorney	% of Total Awarded
Shirley Hoak	1	\$ 40,125.00	100.00%
Total	1	\$ 40,125.00	100.00%

There were no awards in the Taxes category during 2003.



Although belated, I wish to thank everyone who helped get my money back . . . I am now in the process . . . to help the low-income, disabled, and the elderly. It is my way of giving back for things I have received. . . (CSB-2001-083) 7/17/2004

## DISMISSED CLAIMS

**Table Showing Details of Dismissals According to Basis and Reason**

Attorneys	No. of Cases Dismissed	Basis of Claim	Reason for Dismissal
Irine Bavelsky	32	SETT	3rd Party Recovery
Leonard J. Cuddy	7	UNRET	Restitution by Attorney
William C. McPhee	2	UNRET	Insufficient Evidence
Richard P. Blaustein	1	RE	3rd Party Recovery
Richard H. Clark	1	RE	Insufficient Evidence
Neil F. Colleran	1	UNRET	Voluntary Withdrawal
Randall B. Warren	1	UNRET	Fee Dispute
Thai Ngoc Nguyen	3	UNRET	Fee Dispute (1), No Defalcation (2)
Paul J. Grella	1	UNRET	Fee Dispute
Morris M. Goldings	1	FID	Voluntary Withdrawal
	2	UNRET	Voluntary Withdrawal, 3rd Party Recovery
	2	SETT	Fee Dispute, No Defalcation
Edward Hodgkinson	1	UNRET	No Defalcation
Richard Wynn	1	SETT	Voluntary Withdrawal
Demetrios George Kafkas	1	SETT	Voluntary Withdrawal
Walter R. Snyder	1	INV	No attorney-client Relationship
Carlos M. Gomez	1	RE	Restitution by Attorney
James C. Dragon	1	SETT	Restitution by Attorney
Total	60		
SETT-Settlement Proceeds; UNRET-Unearned Retainer; FID-Fiduciary Funds; INV-Investment; RE-Real Estate Funds			

Although the sixty dismissals rank second highest in Board history, that number shrinks to twenty-eight after the Bavelsky claims are removed. (For a description of those claims, see page 6.) One-half of those twenty-eight dismissals involve either restitution by the disciplined lawyer (9) or a voluntary withdrawal (5). Other reasons for dismissal included: fee disputes; third-party recovery; no defalcation or attorney-client relationship; and, insufficient evidence.

... My husband and I are so very grateful to the Clients' Security Board for taking up our cause and assisting us to see justice done in what has been a very difficult and trying circumstance. Please express our sincere and lasting thanks to all of the members of the Board.  
(CSB-2004-022) 6/24/2004.

## PENDING CLAIMS

**Table Detailing Analysis of Pending Claims at Fiscal Year  
End - 08/31/04**

BASIS	# CLAIMS PENDING	% OF TOTAL CLAIMS PENDING	TOTAL CLAIMS	% OF TOTAL \$\$ IN PENDING CLAIMS
Bankruptcy	5	4.67%	\$ 99,683.75	0.80%
Fiduciary	12	11.21%	\$ 3,422,441.67	27.32%
Investment	4	3.74%	\$ 826,961.15	6.60%
Real Estate	18	16.82%	\$ 1,688,130.66	13.48%
Settlement	26	24.30%	\$ 861,520.44	6.88%
Trusts & Estates	10	9.35%	\$ 5,242,539.67	41.85%
Unearned Retainer	32	29.91%	\$ 385,576.51	3.08%
Total	107	100.00%	\$ 12,526,853.85	100.00%

At the start of the fiscal year, pending claims stood at a record \$14,527,530. During the year, that number fell by \$2,000,677 or 13.8%, but still represents the second-highest dollar amount of pending claims in Board history. Despite that progress, the remaining amount is still daunting and represents the legacy of Morris Goldings, who alone accounts for approximately \$8.2 million or 65% of the total pending claims.

The Board has closely monitored the bankruptcies of Mr. Goldings and of his former firm. Progress toward final resolution has been impeded by a major adversary proceeding and anticipated appeals. The Board remains optimistic that the firm's professional liability insurer and Mr. Goldings' former law partners will make available substantial amounts to reimburse former clients.

## RESTITUTION

During 2004, for the second time in Board history, restitution exceeded \$200,000.00. The exact figure was \$208,581.87, 23% less than the record set in 2003 (\$272,540.70). During 2004, restitution came from the following sources: court ordered - \$46,981.54; voluntary - \$100,719.68; Board activity - \$56,210.49; and other - \$4,598.16.

✦ FISCAL YEAR 2004

**Attorneys Who Assisted Claimants in Cases  
Adjudicated by the Clients' Security Board  
09/01/03 - 08/31/04**

*The Board is pleased to publicly acknowledge and thank the following lawyers who generously contributed their time and talents during FY 2004 to represent claimants before the Board for which, by Court rule, they may not receive compensation.*

**Barnstable County**

John R. Costello  
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P.O. Box 2054  
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Nesbit C. Lofton  
Ned C. Lofton, P.C.  
92 Montvale Avenue, Ste 4150  
Stoneham, MA 02180

Saher Joseph Macarius  
Law Office of Saher Macarius  
21 Walsh Street  
Framingham, MA 01701

**Essex County**

Cheryl Miller  
30 Western Avenue, Ste 212  
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Ara Margosian II  
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**Hampden County**

Michael J. Walsh  
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John N. Santangelo  
135 Beaver Street  
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**Norfolk County**

Jill M. Bradley  
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## ✚ FISCAL YEAR 2004

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### **Suffolk County**

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Peter R. Fenn  
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Michael B. Galvin  
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Boston MA 02210-2211

Damon P. Hart  
Holland & Knight LLP  
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Boston, MA 02116

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Lynch Brewer Hoffman & Fink  
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Alan Katz  
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Joseph B. Lutz  
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## ✚ FISCAL YEAR 2004

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John E. Sutherland  
Brickley Sears & Sorett  
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**Worcester County**  
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Seder & Chandler  
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Worcester, MA 01608

Robert A. Perrone  
5 Irving Street  
Worcester, MA 01609

Stephen M. Rodolakis  
McCarthy Pojani & Hurley LLP  
446 Main Street  
Worcester, MA 01608

**Outside Massachusetts**  
William M. Treadwell  
4450 S. Park Avenue  
Chevy Chase, MD 20815

Thank you for the professional manner in which you handled this claim for my clients.  
(CSB 2003-115) 5/27/04

## 2004 William J. LeDoux Award Winner

Laura Hancock Barry



LAURA HANCOCK BARRY IS AN ASSOCIATE WITH THE WORCESTER LAW FIRM OF FLETCHER, TILTON & WHIPPLE, P.C. SHE IS THE FIRST FEMALE, THE YOUNGEST LAWYER AND THE MOST RECENT BAR ADMITTEE TO BE SO HONORED.

MS. BARRY JOINED THE FIRM OF FLETCHER, TILTON & WHIPPLE, P.C. IN 2000 AND CONCENTRATES IN CIVIL LITIGATION. ELECTED PHI BETA KAPPA, MS. BARRY IS A CUM LAUDE GRADUATE OF BOTH UNIVERSITY OF MASSACHUSETTS AT AMHERST (B.A. 1994) AND SUFFOLK UNIVERSITY LAW SCHOOL (J.D. 1997). PRIOR TO JOINING THE FIRM, MS. BARRY SERVED AS A LAW CLERK FOR THE JUSTICES OF THE SUPERIOR COURT SITTING IN SUFFOLK, MIDDLESEX AND ESSEX COUNTIES. SHE IS CURRENTLY A MEMBER OF THE BOARD OF DIRECTORS OF DISMAS HOUSE, AND SERVES AS A CONSULTANT TO THE CENTER FOR WOMEN AND ENTERPRISE, BOTH OF WHICH ARE NON-PROFIT OR CHARITABLE ORGANIZATIONS IN THE CITY OF WORCESTER.

*"During the course of [our] meeting, it seemed to me [that] the betrayal that these two [clients] had experienced had caused them to be mistrustful of lawyers, ... the legal system and perhaps even doubt the goodness of people in whom they were supposed to place their trust. . . . the former lawyer's breaches of ethical and fiduciary responsibilities not only caused financial loss to these clients, but took an emotional toll as well.*

...

*"I like to think, that over the course of those months leading up the hearing at the [Clients' Security Board], these two clients were able to recover something else – their trust in lawyers and the judicial system that we represent. If so, part of the credit belongs to the [Clients' Security Board], which reimbursed the funds lost. To me, the Board [represents] something that makes our profession special and distinct from others, as it provides a mechanism of protecting the clients, even when one of our fellow lawyers breaks the cardinal rules of engagement.*

*"In law, particularly in litigation, we often rank our success as a lawyer in terms of winning and losing. But our role is much more than that – there are times when it comes down to a simple matter of 'righting a wrong.' When it is all said and done – that is how to consider this case – not as a win but as a matter of righting a wrong."*

*(Excerpts from Ms. Barry's remarks following the Award Presentation at the Worcester County Courthouse, May 20, 2004)*

**The William J. LeDoux Award was established in honor of William J. LeDoux, a Worcester County practitioner, who served on the Clients' Security Board for ten years, acting as chairman for seven of those ten years. The award is presented each year to a lawyer who has demonstrated extraordinary skill and perseverance in representing a claimant before the Board.**

## Previous Winners of the William J. LeDoux Award

Peter H. Sutton (1998)  
Riemer & Braunstein, Boston

Nathan H. Proctor  
and  
Charles F. Proctor, Oxford (1999)

Thomas G. Hoffman (2000)  
Hoffman & Greene, Boston

Douglas W. Salvesen (2002)  
Yurko & Salvesen, PC, Boston

Jerry Cohen (2003)  
Perkins, Smith & Cohen, LLP, Boston

*Thank you all so much for the recent notification of the settlement of my mother's claim.*

*I would like to express my sincere appreciation for your time, your review, and your decision. I have been distressed for such a long period of time with an outlook that was so bleak. When I look back at the turn of events, I cannot believe that this happened to me.*

*Your decision has changed my life, my outlook, and my belief in the judicial system.*

*Please consider yourself as outstanding professionals and men and women of outstanding character. (CSB-2003-074) 5/26/04*



## CLIENTS' SECURITY BOARD MEMBERS



**Edward W. McIntyre, Esq.**, a Board member since November 1, 1999, and Chair of the Board effective November 2003, is a solo practitioner in Clinton, Massachusetts concentrating in civil litigation. He is a member of the Supreme Judicial Court's Pro Bono Committee, a Hearing Officer for the Board of Bar Overseers, past president of the Worcester County Bar Association, a director of the Worcester Bar Foundation, Vice-President of the Massachusetts Bar Association and a member of the MBA's House of Delegates.



**John R. Gobel, Esq.**, a Board member since November 9, 2001 and Vice Chair of the Board effective November 2003, is a partner in the law firm Gobel & Hollister in Pittsfield, Massachusetts, where he is engaged in the general practice of law. Mr. Gobel is a former lecturer at the Berkshire Community College, the Paralegal Institute, and the Massachusetts Bar Association's Continuing Legal Education Program. He is also a former Chair of the Probate Court Committee of the Berkshire County Bar Association.



**Evelynne L. Swagerty, Esq.**, a Board member since November 1, 1999, is Senior Counsel at Bank of America within the Litigation Group of the Corporate Legal Department. Ms. Swagerty is an appointee of Governor Romney to the Judicial Nominating Commission. She is a former member of the Board of Directors of the Women's Bar Association and a past president of the Massachusetts Black Women Attorneys Association.



**Peter H. Sutton, Esq.**, a Board member since November, 2000, is a senior partner and Chair of the litigation department in the Boston law firm of Riemer & Braunstein LLP, which he joined in 1973, after his tenure as Chief Law Clerk to the Justices of the Superior Court. He has a diversified litigation practice with emphasis on business and commercial matters and bankruptcy law. Mr. Sutton has been a volunteer lecturer at the Boston University School of Law and has served as a trustee for several charities. He is a founder and president of the new Hellenic Bar Association. In 1988, he received the first annual William J. LeDoux Clients' Security Board Award for outstanding pro bono legal representation of a claimant before the Board.

## ↓ FISCAL YEAR 2004



**Lucy W. West, Esq.**, a Board member since December 1, 2002, is a partner at Rackemann, Sawyer & Brewster of Boston and Wellesley, where she concentrates in estate planning and the administration of estates and trusts. Ms. West began her legal career as a staff attorney at the U.S. Court of Appeals for the First Circuit, and has been in private practice ever since. Elected to the American College of Trust & Estate Counsel, she is past Moderator and Program Chair of the Boston Probate & Estate Planning Forum and past Chair of the New Developments Committee of the Boston Bar Association Trusts & Estates Section.



**Guy B. Moss, Esq.**, a Board member since December 1, 2002, is a partner in the law firm of Bingham McCutchen LLP in Boston, where he concentrates on bankruptcy law, creditors' rights and commercial law. A Fellow of the American College of Bankruptcy, Mr. Moss is an active member of the Boston, Massachusetts and American Bar Associations, and the American Bankruptcy Institute, as well as a frequent author and lecturer in his field.



**Peter G. DeGelleke, Esq.**, appointed to the Board in 2003, is a sole practitioner who specializes in criminal and civil litigation and corporate risk management. His office is in Concord, Massachusetts, where he is of counsel to the firm of McWalter, Barron & Boisvert. Admitted to the Bar in 1977 after graduating from Georgetown Law School, Mr. DeGelleke served two terms as a Hearing Officer for the Board of Bar Overseers, serves as an arbitrator for the Massachusetts Bar Association Fee Arbitration Board, and teaches trial advocacy in the Harvard Law School Trial Advocacy Workshop. A member of the Association of Trial Lawyers of America (ATLA), he provided pro bono representation to the family of a September 11 victim before the Victim Compensation Fund as part of the Trial Lawyers Care program.

## CLIENTS' SECURITY BOARD COUNSEL



**Michael Fredrickson, Esq.**, is counsel to the Clients' Security Board. He received his bachelor's degree in English from Macalester College, attended Oxford University as a Rhodes Scholar, and did graduate work in English literature at the University of Toronto. After receiving his law degree from Harvard Law School, he worked for over five years as an associate at the Boston law firm of Hill & Barlow before taking his present position with the Clients' Security Board. He also serves as general counsel to the Board of Bar Overseers, the state's lawyer disciplinary agency.



**Karen D. O'Toole, Esq.**, has been the assistant board counsel to the Clients' Security Board and the associate general counsel to the Board of Bar Overseers since 1989. From 1986 until 1989, Ms. O'Toole was an associate at the law firm of Hoch & McHugh in Boston practicing maritime law. She received her B.A. from Carnegie-Mellon University, her M.S.W. from the University of Michigan, and her J.D. from Northeastern University.



**Adam M. Lutynski, Esq.** became assistant board counsel in 2002 after fourteen years as general counsel and secretary to an NYSE-listed technology solutions company. He is also a former public defender, legal aid lawyer and law school instructor. B.S., Loyola University (Chicago) - J.D., University of Chicago Law School.

*Thank you for your recent letter and the good news on [my client's] claim.  
CSB-2003-092, 5/26/04*

## HOW TO FILE A CLAIM FOR REIMBURSEMENT

### INFORMATION CAN BE OBTAINED FROM:

- The Clients' Security Board's web site at [www.mass.gov/ClientsSecurityBoard](http://www.mass.gov/ClientsSecurityBoard);
- The offices of the Clients' Security Board, 2<sup>nd</sup> Floor, 99 High Street, Boston, 02110; or
- By calling 617.728.8757.

*Thank you for your patience and assistance on my claim before the CSB. Please extend my appreciation to your board on my behalf.*

*It was very unfortunate that my attorney placed his needs ahead of his client's, but [I am] very fortunate that an organization of attorneys not only recognize that these problems exist, but remedy those wrongful acts.*

*On behalf of my family and myself thank you again.  
CSB-2001-003, 1/18/2004*

*On behalf of [my client] please thank the Board for its very fair treatment of this claim. [My client] is very grateful that the Board exists to remedy these unfortunate situations.*

*CSB 2002-50, 2/18/2004*

**CLIENTS' SECURITY BOARD MEMBERSHIP**  
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**CLIENTS' SECURITY BOARD OF THE SUPREME JUDICIAL COURT**

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